

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY  
OF SANTA BARBARA APPROVING AN 18-YEAR  
LEASE WITH AN OPTION TO RENEW FOR AN  
ADDITIONAL TEN YEARS WITH THE ELINGS PARK  
FOUNDATION FOR THE LAS POSITAS TENNIS  
FACILITY.

THE COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS  
FOLLOWS:

Section 1. In accordance with the provisions of Section 521 of the Charter of the City of Santa Barbara, an 18-Year Lease with an Option to Renew for an Additional Ten Years with the Elings Park Foundation for the Las Positas Tennis Facility is hereby approved.

**LEASE AGREEMENT  
BETWEEN  
THE CITY OF SANTA BARBARA  
AND  
THE ELINGS PARK FOUNDATION  
FOR THE OPERATION AND MAINTENANCE OF  
THE LAS POSITAS TENNIS COURTS**

## List of Exhibits

Exhibit A - Premises Map

Exhibit B - Nondiscrimination Certificate

Exhibit C – Tennis Facility Programming

## **LEASE**

This Lease Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2010. By and between

The City of Santa Barbara, a municipal corporation, hereinafter referred to as "City"; and

The Elings Park Foundation, a California non-profit corporation, herein after referred to as "Foundation."

## **WITNESSETH**

WHEREAS, the City of Santa Barbara and Elings Park Foundation have a shared mission to provide park and recreation programs and facilities for the community, and

WHEREAS, the City of Santa Barbara owns the Las Positas Tennis Facility in the City of Santa Barbara as shown on the map attached hereto as Exhibit A, providing tennis courts and tennis programs for youth and adults, and

WHEREAS, Elings Park Foundation maintains and operates Elings Park which is immediately adjacent to Las Positas Tennis Facility, and

WHEREAS, the City of Santa Barbara has experienced, and is likely to continue to experience in the coming years, economic challenges resulting in deferred maintenance of the Las Positas Tennis Facility and the reduction or elimination of tennis services for the community, and

WHEREAS, Elings Park Foundation wishes to partner with the City of Santa Barbara to fund, operate and maintain the Las Positas Tennis Facility, to insure tennis services to the public are continued, to improve the current condition to a level consistent with the overall quality of Elings Park venues and facilities, and to be good stewards for the facility for future generations.

WHEREAS, it is in the best interest of the City and the public to lease the Las Positas Tennis Facility to Foundation for the continued operation and maintenance of the tennis facility.

NOW THEREFORE, the parties hereby mutually agree as follows:

### **I. DEFINITION OF TERMS**

The following words have in this Lease the definition attached to them in this section unless otherwise apparent from the context.

“CITY” means City of Santa Barbara, a municipal corporation, its officers, members of the City Council, agents, employees and authorized representatives. “CITY ADMINISTRATOR” means the City Administrator of the City of Santa Barbara or the Administrator’s designated representative.

“CITY COUNCIL” means the Council of the City of Santa Barbara.

“FIXTURES” means any personal property installed in, on or upon the premises by Foundation.

“EQUIPMENT” means Foundation’s equipment, furniture and moveable property placed in, on or upon the premises by Foundation, including trade fixtures.

“IMPROVEMENTS” means any addition to or modification, alteration or betterment of the real property made by Foundation including, but not limited to, buildings, driveways, sidewalks, sewers, utilities and other permanent structures.

“FOUNDATION” means the Elings Park Foundation, a California non-profit corporation, its officers, agents, employees and authorized representatives.

“PARKS AND RECREATION DIRECTOR” means the Parks and Recreation Director of the City of Santa Barbara.

## **II. PREMISES**

### **2.01 Premises:**

City hereby leases to Foundation and Foundation leases from City, the Las Positas Tennis Facility in the City of Santa Barbara as shown on the map and attached hereto as Exhibit A, hereinafter referred to as the “Premises”.

The Las Positas Tennis Facility has six lighted hard surface tennis courts, an enclosed backboard area, and a large outdoor amphitheater seating area. The courts and backboard area are fenced with windscreens. The courts are furnished with nets and fixed benches. The facilities include programmable on-demand lights, as well as an office, storage, tennis announcement bulletin board, a court sign up board, men’s and women’s restrooms and adjacent locker/shower facilities. The facility parking lot is gravel with approximately 40 spaces. Additional improvements to the facility include pathway security lights, a wood arbor, and a facility sign at the Las Positas Road entrance to the parking lot.

## 2.02 Development of New Facilities:

A. Foundation shall conduct no new construction, installation, or other permanent development in, on or upon the Premises without the prior written consent of the Parks and Recreation Director who shall review proposed projects in consultation with the Public Works Director. Foundation may appeal the denial of a project by the Parks and Recreation Director to the City Council in accordance with section 1.30.050 of the Santa Barbara Municipal Code. Maintenance and repair of existing facilities does not require prior consent of the Parks and Recreation Director.

The approval of any project by the Parks and Recreation Director or the City Council on appeal pursuant to this provision shall constitute an action of the City in its proprietary capacity only and shall in no way excuse Foundation from complying with any laws, rules, regulations and ordinances regarding the development and use of the Premises nor shall any approval pursuant to this provision limit the exercise of discretion in the design review process by any City officer, board or commission or the City Council.

B. All construction undertaken pursuant to this Lease shall be of first quality construction and architectural design and in accordance with plans and specifications submitted to and approved by City.

C. Foundation and City shall share with each other all geological or other reports or studies of the Premises that either party may prepare or cause to be prepared.

D. At least ten (10) days prior to commencement of any construction on the Premises, Foundation shall provide to City evidence of a performance bond or cash escrow deposit in an amount equal to one hundred percent (100%) of the contract price as security for the contractor's faithful performance of the construction. This bond or escrow deposit shall be in such form and with such surety or escrow agent as may be approved by City. Foundation shall bear all costs and fees associated with any bond or escrow deposit.

E. At least ten (10) days prior to commencement of any construction on the Premises, Foundation shall provide to City evidence of a payment bond or cash escrow deposit as security for the faithful payment of all obligations of the contractor under any construction agreement between Foundation and the contractor. This bond or escrow deposit shall be in such form and with such surety or escrow agent as may be approved by City. Foundation shall bear all costs and fees associated with any bond or escrow deposit.

F. To the extent the California Labor Code requires the payment of prevailing wages for any work on improvements, fixtures or equipment on the Premises, Foundation shall ensure that any contractors hired by Foundation to perform any such work shall comply with the provisions of the Labor Code and Foundation shall indemnify and hold the City harmless for the failure of any contractor to comply with the provisions of such code.

### **III. TERM**

#### **3.01 Term**

The term of this Lease shall commence upon the effective date of the ordinance approving the City's execution of this Lease ("Commencement Date") and shall continue until April 24, 2028. Upon written notice given to City not less than three (3) years prior to the expiration of the original lease term, Foundation, at its option, may extend the term of this Lease for an additional ten (10) years subject to the same terms and conditions as set forth herein.

### **IV. RENTAL**

#### **4.01 Rent:**

Foundation shall pay annually to City One Dollar (\$1.00) as rent for the Premises. The rental payment shall accompany the annual report required pursuant to Section 8.04.

As additional consideration for the right to possess and operate the Premises, Foundation shall provide and maintain for the life of this Lease programming consistent with the programming described in Exhibit C.

### **V. TITLE**

#### **5.01 Title to Real Property:**

Title to real property which is the subject of this Lease shall remain in the City.

#### **5.02 Improvements Constructed by Foundation:**

Title to all improvements and fixtures constructed or placed by Foundation upon the Premises shall remain in Foundation until termination of this Lease. Upon expiration of the term or other termination of this Lease, title to all improvements upon the Premises shall vest in City without compensation therefore to Foundation.

## **VI. USES**

### **6.01 Use of Premises:**

The Premises shall be used only for the development, operation and maintenance of a public tennis recreation facility. It shall not be used or operated by Foundation so as to directly financially benefit any officer, director, or member of Foundation.

### **6.02 Compliance with City Charter Section 520:**

All use of the Premises pursuant to this Lease shall be compatible with and accessory to the park purposes for which the City Council has designated the Premises in accordance with section 520 of the City Charter. A City Council finding of compatibility shall be required as a condition precedent for any consent for any new development or installation on the Premises.

### **6.03 Limitation on Use:**

Foundation shall not use or permit the use of the Premises in any manner that creates damage, waste or a nuisance, or that unreasonably disturbs owners or occupants of, or causes damage to neighboring properties. Foundation may not use the parking lot or any other portion of the Premises in a manner that conflicts with the programming specified in Exhibit C.

### **6.04 Unlawful Use:**

Foundation agrees that no improvement shall be erected, placed upon, operated or maintained within the Premises, nor any business conducted or carried on there and/or therefrom, in violation of the terms of this Lease or in violation of any regulation, order of law, statute, bylaw or ordinance of a governmental agency having jurisdiction over the Premises.

### **6.05 Rules and Regulations:**

Foundation shall conform to and abide by all rules and regulations relative to the uses herein authorized, and shall be subject at all times to applicable rules, regulations, resolutions, ordinances and statutes of the City of Santa Barbara, County of Santa Barbara, State of California, the Federal Government and all other governmental agencies were applicable. Where permits or licenses are required for the development or use authorized herein they must be obtained by Foundation from the regulatory body having jurisdiction thereof before such use is undertaken.



## **VII. OPERATION OF LAS POSITAS TENNIS COURTS**

### **7.01 Solicitation of Grants:**

Foundation shall be responsible for and shall have the right to solicit and receive grants, donations and gifts to fund tennis court maintenance and operation. City shall support Foundation fundraising activities as City resources permit and as consistent with City administrative priorities. City may endorse Foundation grant applications and, when required by a granting agency, City may submit grant applications on behalf of Foundation for tennis court projects. Notwithstanding any commitment of assistance or support in this section, City is not required to commit resources to writing Foundation grants or to otherwise alter the City's grant priorities.

### **7.02 Concession Agreements:**

Foundation may enter into concession agreements for the provision of services to the public that are compatible with or assessor to park and recreation purposes on the Premises. All foods, beverages, confectionery, refreshments, or other items, sold or kept for sale shall conform in all respects to federal, state and municipal laws, ordinances and regulations. Foundation shall require all concessionaires operating under their authority to obtain at their own expense any and all permits or licenses that may be required in connection with the operation of any concession.

Any concession agreement entered into by Foundation shall only be a license to provide services on the Premises and shall not constitute an interest in the real property of the Premises. Any and all concession agreements shall terminate upon Foundation's assignment of this Lease or other termination of Foundation's interest in the Premises.

### **7.03 Fees and Charges:**

Foundation may impose and collect fees and charges for the use of park facilities to support the programs, maintenance and operation of the facility.

7.04 Maintenance:

For the term of this Lease, Foundation, at its sole cost and expense, shall keep and maintain the Premises and all improvements, fixtures, equipment and utilities on the Premises in good order, condition and repair and in compliance with all applicable laws.

7.05 Utilities:

Foundation shall make all necessary arrangements and pay for all water, gas, electricity, telephone, trash disposal and other utilities and services supplied to the Premises together with any taxes thereon.

7.06 Contracts with City:

Foundation may, if agreeable to City, contract with City for park programming, staffing and/or maintenance.

7.07 Naming of Facilities:

Notwithstanding the provisions of Chapter 22.48 of the Santa Barbara Municipal Code, Foundation shall have the right to name areas and facilities within the Premises pursuant to the request of persons or organizations who have made financial contributions towards the development or maintenance of the Tennis Facility. Any renaming of the Premises itself shall be subject to the approval of the City Council following a public hearing.

**VIII. OBLIGATIONS OF FOUNDATION**

8.01 Exclusive Use of Funds:

All monies received by Foundation for development, maintenance and operation of the Premises shall be used exclusively for said purposes. All monies received by Foundation from the operation or use of the Premises shall be committed to the development, maintenance and operation of the tennis facilities primarily; and, to a lesser extent, the Elings Park Premises. No member of Foundation's Board of Directors shall receive any direct financial benefit from the use of such funds.

#### 8.02 Annual Report:

On or about July 1st, of each year during the term of this Lease, Foundation shall submit to the City an annual report showing its revenues and income, its expenditures, its resources, and a descriptive account of its activities during the preceding twelve months including any maintenance completed and capital improvement plans for the future approved by the Foundation Board during the prior year.

#### 8.03 Maintenance and Inspection of Records:

Foundation shall maintain true, correct and accurate records of its development, maintenance and operation of the Premises. Foundation shall keep and maintain said records for not less than five years.

All of the Foundation's books of account and records relating to this Lease shall be made available at one location within the City limits of the City of Santa Barbara. City shall, through its duly authorized agents or representatives, have the right to examine and audit said books of account and records at reasonable times and upon reasonable notice for the purpose of determining the accuracy thereof. Any audit of such books and records shall be conducted at City's expense.

### **IX. INDEMNITY AND INSURANCE**

#### 9.01 Indemnity & Hold Harmless:

Foundation agrees to investigate, defend, indemnify and hold harmless the City, its officers, employees and agents, from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expense (including attorneys' fees) and causes of action of whatsoever character which the City may incur, sustain or be subjected to on account of loss or damage to property and loss of use thereof and for bodily injury to or death of any persons (including but not limited to property, employees, sub-contractors, agents and invitees of each party to here) arising out of or in any way connected with the work to be performed or occupancy, operation, maintenance, enjoyment, or use of the Premises under this agreement.

9.02 Insurance:

A. Required Insurance Coverage

Foundation shall maintain and keep in force during the term of this Lease, for the mutual benefit of City and Foundation, at Foundation's sole cost and expense, the following insurance:

1. Property Insurance insuring against loss of or damage to all improvements, fixtures and equipment on the Premises resulting from fire, lightning, vandalism, malicious mischief, those risks ordinarily defined as "all risk coverage". Such property insurance shall be in amount equal to the full replacement cost of said improvements, fixtures and equipment, including all required code upgrades.

2. Comprehensive General Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) for each occurrence combined single limit for bodily injury and property damage. Coverage thereunder shall include endorsements for contractual liability, personal injury, owners' and contractors' protection, and fire legal liability.

3. Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage for all vehicles owned or operated by Foundation.

4. Workers' Compensation Insurance in compliance with statutory limits.

B. General Insurance Policy Requirements

1. All insurance provided for in this section shall be enacted under valid and enforceable policies in form and substance satisfactory to City issued by insurers satisfactory to City and authorized to do business in the State of California. Such insurance shall apply as primary and not in excess of or contributing with any insurance that City may carry. The policies required shall name City, its officers, employees and agents as additional insured. Foundation's insurance policies shall apply separately to each named or additional insured as if separate policies had been issued to each. Foundation's insurance, as required by this Lease, shall not be subject to cancellation or material reduction without at least thirty (30) days prior written notice to the City. Foundation shall furnish to City a Certificate of Insurance evidencing that the above requirements have been met on or before the commencement of this Lease and upon the renewal of each policy.

2. Foundation hereby expressly waives on behalf of its insurers hereunder any right of subrogation against City, and City likewise waives on behalf of its insurers any right of subrogation against Foundation, that such insurers may have against City or Foundation by reason of any claim, liability, loss or expense arising under this Lease. The foregoing mutual waivers of subrogation are conditioned upon such waivers being available from the insurers of each party without the payment of additional insurance premiums. In the event that either party at any time determines that such waiver is not or is no longer so available, it shall promptly notify the other party in writing of that fact.

3. City shall retain the right to review at any time the coverage, form and amount of insurance required hereby. If, in the opinion of City, the insurance provisions in this Lease do not provide adequate protection for City and for members of the public using the Premises, City may require Foundation to obtain insurance sufficient in coverage, form and amount to provide adequate protection. City's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of the risks that exist at the time a change in insurance is required.

4. The procuring of such required policy or policies of insurance shall not be construed to limit Foundation's liability hereunder or to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policy or policies of insurance, Foundation shall be obligated for the full and total amount of any damage, injury or loss caused by negligence or neglect connected with this Lease or with use or occupancy of the Premises.

#### 9.03 Insurance Proceeds:

Upon the occurrence of any loss, the proceeds of any insurance shall be paid to a financial institution or trust company with an office in Santa Barbara County designated by Foundation and approved by City (the "Insurance Trustee"). In the event of such loss, Foundation shall be obligated to rebuild or replace the destroyed or damaged improvements, equipment or fixtures in the same or better condition as they existed prior to such loss. All sums deposited with the Insurance Trustee shall be held in trust by the Insurance Trustee with the following powers and duties:

A. The Insurance Trustee shall pay the contractor retained by Foundation for the restoration in installments as the construction progresses. A retention fund of ten percent (10%) of the total contract price shall be established. The contractor shall be paid the retained amount upon the completion of the restoration, acceptance of the work by the Foundation and City, payment of all costs, expiration of all applicable lien periods and proof that the Premises is free of all mechanics' liens and lienable claims.

B. Payments to the contractor shall be made on presentation of certificates or vouchers from the architect or engineer retained by Foundation showing the amount due. If the Insurance Trustee, in the Insurance Trustee's reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Foundation, the Insurance Trustee shall have the right to appoint an architect or engineer to supervise the construction and to make payments to the contractor on certificates or vouchers approved by the architect or engineer retained by the Insurance Trustee. The reasonable expenses and charges of the architect or engineer retained by the Insurance Trustee shall be paid by the Insurance Trustee out of the trust fund.

C. If the sums held by the Insurance Trustee are insufficient to pay the actual cost of the repair, restoration or replacement, Foundation shall deposit the amount of the deficiency with the Insurance Trustee within thirty (30) days after request by the Insurance Trustee indicating the amount of the deficiency.

D. Any undistributed funds following compliance with the provisions of this section shall be delivered to Foundation.

E. All actual costs of the Insurance Trustee shall first be paid from the insurance proceeds, then by Foundation. If the Insurance Trustee resigns or for any reason is unable or unwilling to act or continue to act in accordance with these provisions, Foundation shall substitute a new trustee for the designated trustee. The new trustee must be a financial institution or trust company with an office in Santa Barbara County approved by City.

F. Both Parties shall promptly execute all documents and perform all acts reasonably required by the Insurance Trustee in order for the Insurance Trustee to perform its obligations under this section.

#### 9.04 Termination of Lease Following Damage or Destruction

In the event Foundation terminates this Lease following an event of damage or destruction to the Premises or any improvements thereon, the proceeds of any insurance on account of such damage or destruction shall be paid to City.

### **X. ASSIGNMENTS, SUBLEASES AND ENCUMBRANCES**

Foundation shall not assign or sublease all or any portion of the Premises without the prior written consent of the City Council.

### **XI. DEFAULT**

11.01      Events of Default:

Any of the following occurrences or acts shall constitute an "Event of Default" under this Lease:

A.      If Foundation at any time during the term (regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law or equity or before any administrative tribunal which have or might have the effect of preventing Foundation from complying with the terms of this Lease) shall fail to observe or perform any of Foundation's covenants, agreements or obligations hereunder and such failure is not cured within sixty (60) days after receipt of written or telegraphic notice thereof by Foundation or, in the case of any failure which cannot with due diligence be cured within such sixty-day period, if Foundation should not proceed promptly to cure the same and thereafter conduct the curing of such failure with diligence, it being intended that the time within which to cure the failure shall be extended for such period as may be necessary to complete the curing of the same with diligence; or

B.      If Foundation shall be liquidated or dissolved or shall begin proceedings toward its liquidation or dissolution without the prior written consent of City; or

C.      If Foundation shall commit or suffer to be committed any waste of the Premises or any part thereof; or

D.      If Foundation shall alter the improvements on the Premises in any manner, except as expressly permitted by this Lease; or

E.      If Foundation shall fail to maintain insurance as required by this Lease; or

F.      If Foundation shall engage in any financing except as consented to by the City, or any other transaction creating any mortgage on the Premises, or place or suffer to be placed thereon any lien or other encumbrance, or suffer any levy or attachment to be made thereon without the prior knowledge and consent of City; or

G.      If Foundation fails to operate the park for more than seventy-two (72) consecutive hours, except in the case of such closures as may be allowed or provided for by this Lease (hereafter referred to as an "Abandonment"), City may enter the Premises and operate the park until the resolution of the situation that led to the Abandonment or until the termination of this Lease by either party. If the Lease is not terminated, City reserves the right to charge Foundation for costs incurred by City in the operation of the park during the course of an Abandonment.

11.02            Remedies:

Upon the occurrence of any Event of Default described above, City may terminate Foundation's right to possession by any lawful means, in which case this Lease shall terminate and Foundation shall immediately surrender possession to City. In such event, City shall be entitled to recover from Foundation, any amount necessary to compensate City for all the detriment proximately caused by an affirmative act of Foundation or Foundation's failure to perform its obligations under this Lease. Notwithstanding any provision to the contrary in this Lease, in connection with any termination of this Lease, City acknowledges that Foundation shall not be responsible for any damages caused by (1) any natural disaster or (2) subsidence or failure of the Premises due to the presence of the closed landfill or any prior use of the Premises by City.

**XII.    CONDEMNATION**

If the Premises or any portion thereof is taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively, "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. In the event that only a portion of the Premises is condemned, Foundation may, at Foundation's election, terminate this Lease as of the date the condemning authority takes possession. If Foundation does not elect to terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining. In the event that this Lease is not terminated by reason of the Condemnation, Foundation shall repair any damage to the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of City; provided, however, Foundation shall be entitled to recover all just compensation to which it may legally be entitled, including but not limited compensation for improvements on the Premises owned by the Foundation as described in Paragraph 5.02 above.

**XIII.   MISCELLANEOUS AND INTERPRETIVE PROVISIONS**

13.01            Successors:

This Lease shall be binding upon City and Foundation, their personal representatives, successors and assigns and shall be governed by the laws of the State of California. Any litigation between the Parties concerning this Lease shall be initiated in the County of Santa Barbara, State of California.

13.02            Nondiscrimination certificate:

Foundation agrees to comply with City's nondiscrimination certificate in Exhibit B.

13.03            Captions:



Neither the index nor the title nor the heading to the sections in this agreement are part of this agreement and shall have no effect upon the construction or interpretation of any part hereof.

13.04        Recordation:

The agreement may be recorded or an abstract, memorandum or short form agreement may be recorded at Foundation's expense. City and Foundation agree to execute any abstract, memorandum or short form of this agreement in the form and substance as required by title insurance company insuring Foundation's interest in the Premises.

13.05        Amendments:

This Lease may be amended only in writing, properly executed by City and Foundation.

13.06        Severability:

If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and in no way be affected, impaired or invalidated thereby.

13.07        Time:

Time is of the essence in this Lease.

13.08        Execution and Counterpart:

This Lease may be executed in two or more counterparts each of which shall be an original but all of which shall constitute one and the same instrument.

13.09        Consent of Parties:

Unless another standard or condition is specified in the particular provision, whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval or grant it on unreasonable conditions.

13.10        Corporate Authorization:

Each individual executing this Lease on behalf of any entity shall represent and warrant that he or she is duly authorized to execute and deliver the Lease on behalf of said entity in accordance with the duly adopted resolution of the Board

of Directors or equivalent of that entity and that this Lease is binding upon that entity in accordance with its terms.

13.11        Exhibits:

Attached hereto are Exhibits A, B and C all of which constitute part of this Lease and are incorporated herein by this reference.

13.12        Notices:

All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by messenger or courier service) or may be sent by regular, certified or registered mail with the U.S. Postal Service, with postage prepaid, and shall be deemed sufficiently given if served in the manner specified herein. If such notice is intended for City it shall be addressed to:

City Clerk  
City of Santa Barbara  
P.O. Box 1990  
Santa Barbara, CA 93102-1990

with a copy to:

Parks and Recreation Director  
Parks and Recreation Department  
PO Box 1990  
Santa Barbara, CA 93102-1990

and if intended for Foundation it shall be addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to such other address as either party may have furnished to the other in writing as a place for the service of notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no date is shown, the postmark thereon. If sent by regular mail, the notice shall be deemed given forty-eight (48) hours after the same is addressed as required herein and mailed with postage prepaid. Notices sent by overnight courier services that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the courier. If notice is received

on Saturday, Sunday or a legal holiday, it shall be deemed received on the next business day.

13.13      No Waiver:

No waiver of any default under this Lease shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege or option under this Lease shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege or option hereunder. No waiver of any provision hereof by City or Foundation shall be deemed to have been made unless and until such waiver shall have been reduced to writing and signed by City or Foundation, as the case may be. Failure by City or Foundation, as the case may be, to enforce any of the terms, covenants or conditions of this Lease for any length of time or from time to time shall not be deemed to waive or decrease the right of City to insist thereafter upon strict performance by Foundation.

13.14      No Right to Holdover:

Foundation has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. Nothing contained herein shall be construed as consent by City to any holding over by Foundation.

13.15      Cumulative Remedies:

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

13.16      Surrender of Premises:

Foundation shall surrender the Premises upon the expiration of this Lease or upon any earlier termination date, with all of the improvements and fixtures in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice.

13.17      No Prior or Other Agreements:

This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no prior or contemporaneous agreement or understanding shall be effective. Upon the Commencement Date of this Lease, the prior lease between the Parties dated November 6, 1980 is hereby terminated.

#### **XIV. TERMINATION**

Foundation shall have the right to terminate this Lease at any time with or without cause upon thirty (30) days written notice to City. If Foundation elects to terminate this Lease, Foundation shall immediately surrender possession of the Premises in accordance with section 13.16 above.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this 2010 lease agreement for the Las Positas Tennis Courts as of the date and year first above written.

CITY OF SANTA BARBARA  
A Municipal Corporation

ELINGS PARK FOUNDATION

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James L. Armstrong  
City Administrator

---

Bruce Giffin, President

ATTEST:

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City Clerk Services Manager

APPROVED AS TO CONTENT:

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Nancy Rapp  
Parks and Recreation Director

APPROVED AS TO FORM:  
Stephen P. Wiley, City Attorney

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N. Scott Vincent  
Assistant City Attorney

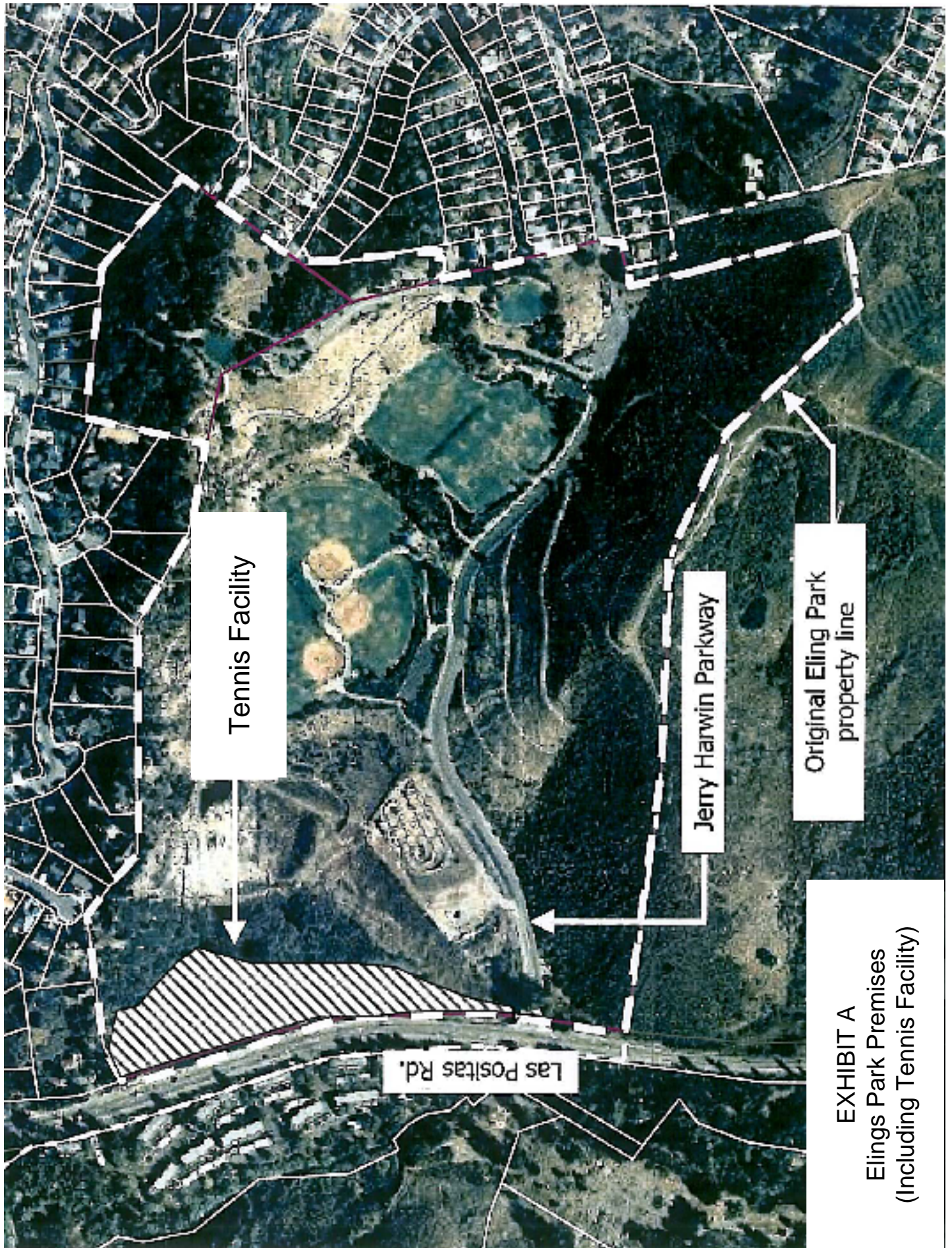
APPROVED AS TO INSURANCE

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Mark Howard  
Interim Risk Manager



EXHIBIT A





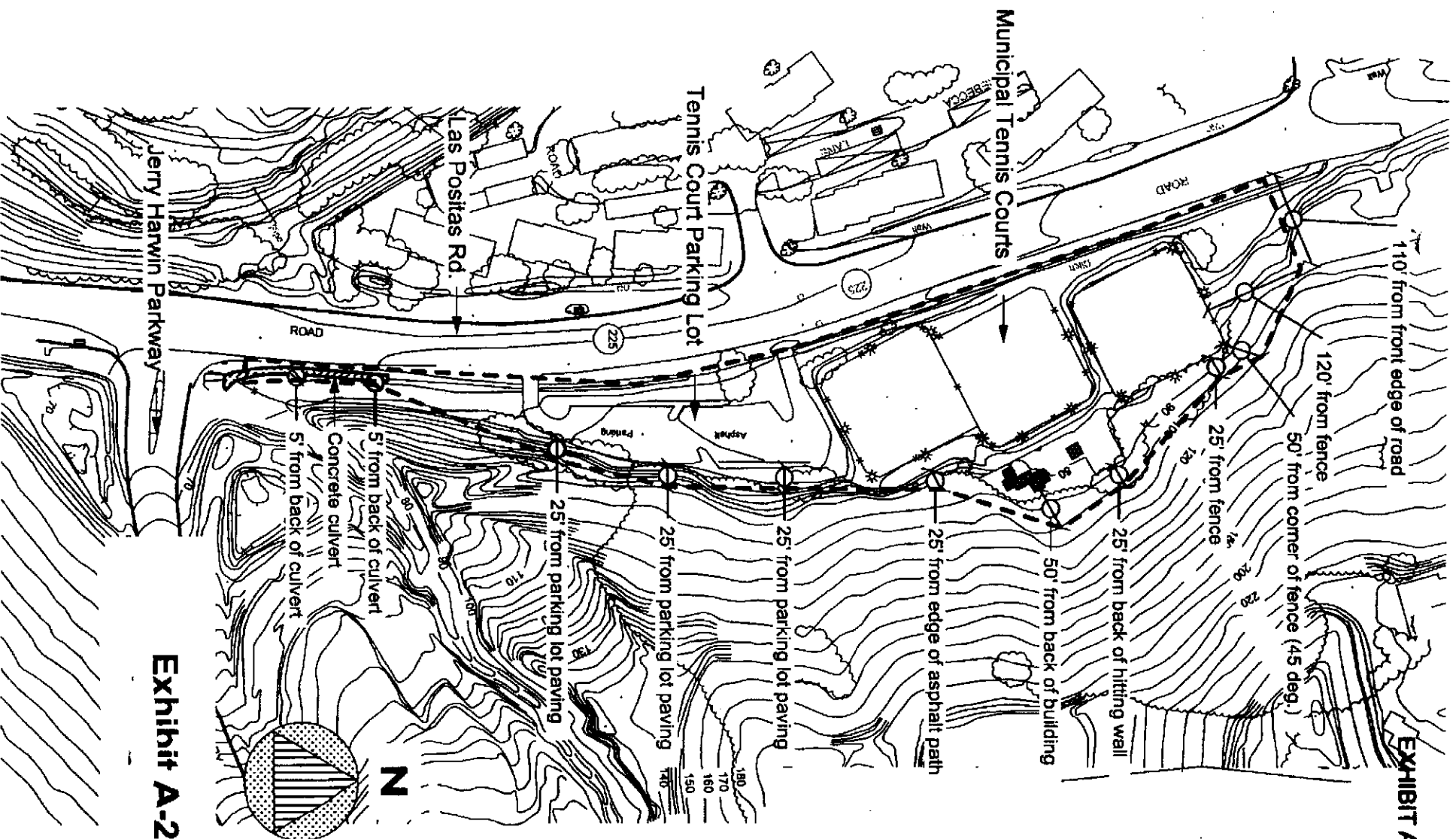


Exhibit A-2

## Exhibit B

### LESSEE'S OBLIGATION FOR NON-DISCRIMINATION CERTIFICATE (Santa Barbara Municipal Code Section 9.130.020)

#### I. Certificate Generally.

Consistent with a policy of non-discrimination in the use of real or personal property owned by the City of Santa Barbara a "lessee's obligation for non-discrimination certificate", as hereinafter set forth shall be attached and incorporated by reference as an indispensable and integral term of all leases of City owned real or personal property.

#### II. Contents of Certificate.

The "lessee's obligation for non-discrimination" is as follows:

(a) Lessee in the use of the property which is the subject of this lease or in the operations to be conducted pursuant to the provisions of this lease, will not discriminate or permit discrimination against any person or class of persons by reason of race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Sections 12900 - 12996) except where such discrimination is related to bona fide occupational qualification.

(b) Lessee shall furnish its accommodations and services on a fair, equal and non-discriminatory basis to all users thereof and lessee shall only charge fair, reason-able and non-discriminatory prices for each unit of service.

Lessee may make reasonable and non-discriminatory rebates, discounts or other similar price reductions to volume purchasers to the extent permitted by law.

(c) Lessee shall make its accommodations and services available to the public on fair and reasonable terms without discrimination on the basis of race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Sections 12900 - 12996) except where such discrimination is related to bona fide occupational qualification.

(d) Lessee shall not discriminate or allow discrimination either directly or indirectly, in hiring or employing persons to work on the leased premises.

(e) Lessee agrees that it shall insert the above articles in any agreement by which said Lessee transfers any interest herein or grants a right or privilege to any person, firm or corporation to use the leased premises or to render accommodations and services to the public on the leased premises.

(f) Non-compliance with provisions (a), (b), (c), (d), and (e) above shall constitute a material breach hereof and in addition to any other remedies provided by law or this lease, in the event of such non-compliance the Lessor shall have the right to terminate this lease and the interest hereby created without liability therefor, or at the election of the Lessor, the Lessor shall have the right to enforce judicially said provisions (a), (b), (c), (d), and (e).

In the event the Lessee is found to have failed to comply with the provisions of articles (a), (b), (c), (d), and (e) and notwithstanding any other remedy pursued by Lessor, the Lessee shall pay to the Lessor the sum of \$25.00 per day for each incident of a failure to comply.



## Exhibit C

### TENNIS FACILITY PROGRAMMING

The City of Santa Barbara (City) and Elings Park Foundation (Foundation) mutually recognize and appreciate the importance of maintaining the Tennis Facility for the primary purpose of providing recreational tennis facilities and opportunities open to the general public. As part of those efforts and for the term of this Lease, Foundation shall be entitled to provide and maintain recreation programming consistent with the terms of this Exhibit C.

#### Hours of Operation

The Tennis Facility may be open to the public for use consistent with the terms of this Lease, in accordance with, but not in excess of, the following schedule:

Monday through Friday	Dawn to 9:00pm (may be extended to 10pm)
Saturday and Sunday	Dawn to dusk (may be extended to 10pm)

#### Programming Decisions

Foundation shall develop and provide tennis programming that consists of an overall year-round balance of activities for youth and adults, including instruction programs, camps, clinics, leagues, and tournaments, with substantial consideration being given to maintaining tennis courts available for informal play on a drop-in basis. Guided by this description of the desired programming mix, Foundation is entitled to determine the appropriate balance of programming activities at the Tennis Facility. When determining the appropriate balance of programming activities, Foundation may consider its need to generate sufficient revenue in order to maintain and operate the Tennis Facility at a level of quality that is consistent with the rest of Elings Park.

If demand for tennis programming should drop to a point where the Tennis Facility is underutilized, Foundation may utilize a portion of the Tennis Facilities for another public recreational use (Alternative Use). Alternative Uses shall not displace demonstrated demand for tennis programming. Utilization of the entire Tennis Facility for an Alternative Use on a permanent basis shall require prior approval from the Parks and Recreation Director. An Alternative Use that requires a permanent alteration to the Tennis Facility (i.e., removal of the net standards or an installation of non-tennis related permanent fixtures on the courts), shall be undertaken pursuant to Section 2.02 of this Lease

## Exhibit C

### Occasional Use for Events

The Tennis Facility may be used on an occasional basis for events produced or hosted by or in conjunction with Elings Park which are intended to raise funds for the maintenance and operation of the Tennis Facility and Elings Park. Such events shall be scheduled and managed in such a way so as to not materially impact the overall recreation programming to be provided at the Tennis Facility pursuant to the terms of the Lease and this Exhibit C.